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Report of the Special Rapporteur on the independence of judges and lawyers**

Note by the Secretary-General

The Secretariat has the honour to transmit to the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, prepared pursuant to Human Rights Council resolution 35/11.

Bar associations play a vital role in the organization and safeguarding of the independence and integrity of the legal profession and its members. The underlying rationale for their creation is the need to provide a platform to allow the legal profession to carry out its legitimate activities without any external interference. Bar associations should meet, at a minimum, the following requirements: (a) independence; (b) a self-governing nature; (c) a general mandate to protect the independence of the legal profession and the interests of its members; and (d) recognition under law.

Bar associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession and to ensure access to justice and the protection of human rights, in particular due process and fair trial guarantees. They protect individual members of the legal profession, particularly in situations where they are not able to adequately defend themselves; elaborate and implement requirements and procedures to gain access to the legal profession; develop codes of professional conduct; and handle disciplinary proceedings against lawyers. Professional associations of lawyers also cooperate with State institutions in providing legal aid services to poor and disadvantaged persons and legal education and training to lawyers throughout their careers.

The report analyses various forms of interference with associations' independence, ranging from legal or administrative obstacles to prevent lawyers from establishing or joining independent professional organizations, to different forms of control by the executive or judicial branch on the entry into or continued practice within the legal profession, and threats of disciplinary action and intimidation against the members of bar associations.

* A/73/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

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On the basis of that analysis, the Special Rapporteur identifies a number of good practices to ensure the independence and effectiveness of bar associations and concludes the report with a list of recommendations on the establishment, composition and functions of those bodies.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 35/11.

2. The report focuses on the essential role that bar associations play in a democratic society to enable the free and independent exercise of the legal profession and to ensure access to justice and the protection of human rights, in particular due process and fair trial guarantees.

3. In preparing the report, the Special Rapporteur called for contributions from States, bar associations and civil society. He requested information on the way the legal profession is organized and regulated at the national level; on the composition of bar associations and their relationships with other branches of power, in particular the executive branch and judiciary; on the role that bar associations play in the regulation of the legal profession; and on the criteria for admission to those associations.

4. At the time of writing, the Special Rapporteur had received a total of 40 responses. He wishes to convey his gratitude to all States and non-State actors that contributed to the preparation of the report, the annex to which contains a full list of respondents. All submissions are available on the website of the Office of the United Nations High Commissioner for Human Rights.

5. The Special Rapporteur would also like to thank the International Bar Association's Human Rights Institute and the Human Rights Clinic of the Human Rights Research and Education Centre of the University of Ottawa for its support in the preparation of the report.

II. Overview

6. The right to have access to a lawyer constitutes an integral part of the right to a fair trial. Several international and regional human rights treaties include the right to be assisted by a lawyer of one's own choosing among the minimum guarantees due to every person charged with a criminal offence. That right has also been proclaimed in a large number of United Nations legal instruments, including the Basic Principles on the Role of Lawyers, which represent the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession.

7. In order for legal assistance to be effective, it has to be carried out independently. That is recognized in the preamble to the Basic Principles, which states that the adequate protection of the human rights and fundamental freedoms requires that "all persons have effective access to legal services provided by an independent legal profession".

8. Since the establishment of the mandate, several Special Rapporteurs have highlighted the fact that professional associations of lawyers have a fundamental role to play in promoting and protecting the independence and the integrity of the legal profession and safeguarding the professional interests of lawyers (see A/71/348, paras. 30–33 and 80–88; and A/64/181, paras. 19–27).

9. Issues relating to the establishment, composition and functioning of bar associations have also been dealt with in a wide number of country mission reports (see, for example, A/HRC/32/34/Add.1, paras. 56–62, 66 and 81; A/HRC/29/26/Add.3, para. 85; A/HRC/29/26/Add.2, paras. 75–81; A/HRC/23/43/Add.1, paras. 90–95; and A/HRC/23/43/Add.2, paras. 87–94). During those missions, the mandate holder has

documented various forms of interference with the independence of bar associations, including: legal or administrative obstacles aimed at preventing lawyers from establishing or joining independent professional organizations (see paras. 34–36 below); vague legislation and policies on the admission to the legal profession (see paras. 54–61 below); legislation that restricts the scope or permissible activities of existing lawyers' associations or limits their self-regulatory power (see paras. 24–28 below); and legislative or regulatory measures to include Government-appointed members in the bar association's executive body (see paras. 39–40 below). On several occasions, mandate holders criticized the existence of State-controlled associations with compulsory membership, stressing that such associations seriously undermine the independence of lawyers (see A/64/181, para. 22).

10. The mandate holder has also addressed various forms of interference with the legitimate activities of bar associations in Human Rights Council special procedure communications. The most recurrent forms of interference include: disciplinary action (including disbarment) or administrative, economic or other sanctions against members of the executive body of the lawyers' association for actions taken in accordance with recognized professional duties, standards and ethics; arbitrary arrest, detention and prosecution of the presidents and members of bar associations; recourse to negative rhetoric against the bar association and its members; and inaccurate reporting on national and local press, including the identification of lawyers and their clients and attacks against lawyers as a category, depicting them as corrupt, dishonest and greedy.[1]

11. The present report aims at assessing the existing international and regional standards relating to bar associations or other lawyers' professional associations established at the national level to protect individual lawyers, and the independence of the legal profession in general. It does not aim at identifying an ideal model of bar association or providing a comprehensive analysis of the effectiveness of those institutions in protecting the independence of the legal profession. Based on the contributions received, the Special Rapporteur seeks to define the common principles for ensuring the independence of such bodies, where they exist, and to identify good practices relating to their mission, composition and functions.

III. Legal standards

12. The Basic Principles recognize that lawyers, like other citizens, have the right to freedom of association and assembly (principle 23), which includes the right to form and join self-governing professional associations to represent their interests (principle 24). They also recognize the vital role that bar associations play in facilitating access to a lawyer and legal services (principles 3 and 4), promoting the continuing education and training of lawyers (principle 9), regulating non-discriminatory access to, or continued practice within, the legal profession (principle 10), protecting their members from persecution and improper restrictions and infringements (principle 25), adopting and enforcing codes of professional

[1] See, for example, communications OL AZE 1/2018, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23569; OL KAZ 1/2018, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23579; UA MDV 5/2017, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23342; JOL TUR 5/2017, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23138; and AL TJK 1/2015, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=21961).

conduct (principle 26) and handling disciplinary proceedings against their members (principles 28 and 29).

13. At the regional level, the role, composition and functions of bar associations are dealt with in a number of recommendations, principles and guidelines. In October 2000, the Committee of Ministers of the Council of Europe issued its Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer, which includes a specific provision on bar associations and their role in protecting the independence of the legal profession and its members against any improper restriction or infringement (principle V). The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted in 2005 by the African Commission on Human and Peoples' Rights, includes a section to the independence of lawyers (section I) as well as specific provisions on the role of professional associations of lawyers in promoting the independence of the legal profession and the interests of their members.

14. The general role, composition and functions of bar associations are spelled out in the Standards for the Independence of the Legal Profession, adopted by the International Bar Association in 1990. Those Standards recognize that the independence of the legal profession constitutes an essential guarantee for the promotion and protection of human rights and is necessary to ensure effective and adequate access to legal services. They include specific provisions aimed at enabling professional associations of lawyers to discharge their competences in relation to access to the legal profession, legal education, legal aid and disciplinary proceedings.

IV. Bar associations: general principles

A. Definition

15. International and regional instruments generally use the expression "professional associations of lawyers" to refer to organizations established by lawyers at the national or local levels to protect the independence and interests of lawyers. Among those legal instruments, only Recommendation No. R(2000)21 expressly refers to "bar associations" in addition to lawyers' associations.

16. Existing legal standards do not provide a definition of what constitutes a professional association of lawyers. They simply focus on the necessary requirements that such institutions must possess, i.e. independence and a self-governing nature. Recommendation No. R(2000)21, for example, provides that lawyers' associations should be self-governing bodies, independent of the authorities and the public (principle V.2), and other standards contain similar language.

17. In most of the respondent States, lawyers' associations are referred to as "bar associations" or "bar councils". However, in some jurisdictions — that is, those that follow the British legal tradition — the term "bar association" only refers to associations that represent the interests of barristers (i.e. lawyers authorized to argue before higher courts), whereas solicitors (lawyers who advise clients, represent them in the lower courts and prepare cases for barristers to try in higher courts) have separate organizations, usually referred to as "law societies".

18. In the present report, the term "bar association" is used to refer to a general professional organization of lawyers established in a given jurisdiction to protect the independence of the legal profession and its members. The Special Rapporteur is aware that the use of such terminology goes beyond the meaning that the term has in some jurisdictions. In those cases, considerations related to bar associations apply — mutatis mutandis — to law societies as well.

B. General mission

19. Existing legal standards place the promotion and protection of the independence and integrity of the legal profession and its members at the core of bar associations' mission.

20. The Basic Principles provide that the aim of lawyers' associations is to represent lawyers' interests, promote their continuing education and training and protect their professional integrity (principle 24). Recommendation No. R(2000)21 lists the strengthening of professional standards and safeguarding the independence and interests of lawyers (principle V.1). The Standards for the Independence of the Legal Profession highlight the protection of the independence of the legal protection as the general mission of bar associations, and then identify a wide range of functions that those organizations may exercise in order to achieve their general mission (para. 18).

21. The Special Rapporteur has emphasized on a number of occasions that associations of lawyers are created for two main purposes: to safeguard the professional interests of lawyers and to protect and strengthen the integrity and independence of the legal profession (see A/71/348, para. 82; and A/64/181, para. 19).

22. The general mission of bar associations in all countries that have responded to the questionnaire is the promotion and protection of the independence of the legal profession and its members.

C. Independence

23. A bar association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, the development and implementation of codes of professional conduct and the right of lawyers to join the association.[2] Government controls, whether direct or indirect, is eliminated or minimized to the greatest extent possible.

24. State involvement in the regulation of the legal profession varies greatly. Not all kinds of external intervention jeopardize the independence of the bar association. In some countries, such intervention is limited to the adoption of legislation on the legal profession,[3] often in consultation with the bar association. States may also retain the power to determine, in collaboration with the bar association, lawyers' fees,[4] the requirements and procedures for access to the legal profession[5] or the development and management of legal aid schemes.[6]

25. In other countries, State interference is more significant, for instance where the Government participates directly in the work of the executive and disciplinary bodies of the association,[7] or appoints some of the members of the disciplinary committee established by the bar association to handle disciplinary proceedings against lawyers.[8] In those cases, it is important that appropriate safeguards be adopted to ensure that

[2] International Bar Association, "The independence of the legal profession: Threats to the bastion of a free and democratic society" (2016), p. 8.

[3] In Germany and Lithuania, for example, national legislation on the legal profession is developed by the executive, whereas in Poland, the legislative branch is responsible for its development in consultation with the bar association.

[4] For example, Slovakia and Azerbaijan.

[5] For example, Lithuania.

[6] Czechia, Italy and Finland.

[7] For example, Cyprus.

[8] For example, Azerbaijan and Denmark.

the delegation of regulatory competences to external actors does not undermine the independence and integrity of the legal profession.

26. The best guarantee of independence is a self-governing body, understood as an organization independent from the State or other national institutions. All existing legal standards stress that bar associations should be self-governing. In practice, that means that the bar association should be able to set its own rules and regulations, make its own decisions free from external influence, represent its members' interests and be able to sustain itself.[9] That entails the profession's right to set up bodies to oversee compliance with such regulations, through the power to admit, discipline and disbar.

27. To ensure true independence, a bar association must also be able to sustain itself. The absence of financial sustainability can affect its operations and effectiveness. Bar associations often sustain themselves by membership fees and the organization of training and events.[10] In cases where it is necessary to obtain funding from outside the legal profession, bar associations should always ensure that external funding does not compromise its independence. They should be particularly cautious of receiving government funding, as such support may be aimed at keeping the bar association close and uncritical of the State machinery.[11]

28. The Special Rapporteur has highlighted on a number of occasions that bar associations should be provided with adequate human and financial resources to perform their functions independently and autonomously (see A/HRC/29/26/Add.3, para. 85; and A/HRC/23/43/Add.2, para. 89). In the latter report, the Special Rapporteur also expressed concerns at the lack of transparency in the allocation of funds to bar associations, which allegedly was subject to personal affinities and political allegiance. In a communication to Kazakhstan, the Special Rapporteur expressed concerns about a draft law on lawyers' activity and legal aid, now entered into force, which jeopardizes the financial independence of the bar by eliminating entrance fees for new lawyers.[12]

D. Establishment

29. Bar associations represent first and foremost the legitimate exercise of freedom of assembly and association (see art. 22 of the International Covenant on Civil and Political Rights and principle 23 of the Basic Principles). In most jurisdictions, freedom of association is recognized in the national constitution and is as such applicable to lawyers, who are thus free to form or join any professional organization.

30. The Basic Principles do not provide any guidance with regard to the establishment of bar associations. Only the Standards for the Independence of the Legal Profession expressly provide that in each jurisdiction one or more independent, self-governing association(s) of lawyers recognized in law should be established, without any prejudice to the right of lawyers to form or join additional professional associations (para. 17).

31. The Special Rapporteur considers that in order to fulfil their role in society, bar associations should be recognized by law, and that it is the duty of State authorities to support the establishment and work of professional associations of lawyers without

[9] Nusrat Chagtai, *Benchmarking Bar Associations* (International Bar Association, 2016), p. 20.

[10] For example, the Bar Association of Serbia, the Law Society of British Columbia and the Law Society of South Africa.

[11] *Benchmarking Bar Associations*, p. 32.

[12] See communication OL KAZ 1/2018, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23579.

interfering in their activities (see A/64/181, para. 21; and A/71/348, para. 82). The law recognizing the bar association should include, at a minimum, provisions relating to its independence, its composition and the definition of its functions, and be elaborated with the meaningful participation of the legal profession (see A/HRC/32/34/Add.1, para. 121; and A/HRC/29/26/Add.4, para. 55).

32. The ways in which lawyers assemble and associate vary among different jurisdictions. Bar associations are established and organized taking into account the unique needs of their legal profession. The International Bar Association identifies five main regulatory models, where the legal profession is: (a) largely regulated by court, including mostly in South America and the Caribbean and in some states of the United States of America; (b) exclusively regulated by a bar association, including mostly in Europe, as well as Francophone and Lusophone Africa; (c) predominantly or exclusively regulated by the Government, including in the Gulf and some countries in Central and East Asia, such as Tajikistan, Kyrgyzstan, China and Viet Nam; (d) predominantly regulated by independent or delegated authorities, for example in England and Wales, a number of states of the United States, Canada and parts of Australia; or (e) predominantly regulated on a mixed or shared basis by representatives of different organizations, for example in some countries in West Africa, such as the Gambia and Ghana, as well as in the Caribbean, such as Belize and Jamaica.[13]

33. Bar associations with a regulatory component are generally established by law.[14] They are recognized as public entities[15] or private association with public functions,[16] and membership in the association is usually compulsory. Bar associations with exclusively representative functions are generally established as private associations, and membership is voluntary.[17]

34. In several country reports, the Special Rapporteur expressed concerns at the lack of a unified independent and self-governing bar association and recommended its establishment (see A/HRC/29/26/Add.1, paras. 78 and 123; A/HRC/23/43/Add.3, paras. 87 and 126; A/HRC/14/26/Add.2, paras. 69 and 88; E/CN.4/2006/52/Add.3, para. 85; E/CN.4/2003/65/Add.3, paras. 39, 93 and 108; and E/CN.4/1998/39/Add.1, para. 146). The mandate holder has also emphasized that the mere existence of a national bar association with no or little regulatory powers (see E/CN.4/2005/60/Add.2, paras. 48 and 81) or voluntary associations of a purely private nature serving the commercial or financial interest of lawyers (see E/CN.4/2003/65/Add.2, para. 114; and A/HRC/23/43/Add.1, paras. 94) are not sufficient to protect and promote the independence and integrity of lawyers.

35. When the profession is unable to exercise its right to associate freely, or where that right is restricted, in law or in practice, lawyers risk finding themselves isolated and unable to act collectively to influence important legislation and policies affecting the legal profession as a whole and the right of lawyers to defend their clients. Lawyers also become more vulnerable to abuse and risk losing their independence (see A/71/348, para. 81). In a report on Belarus, the Special Rapporteur expressed concerns that the functioning of the bar association was weakened by the continuing control by the executive branch over admissions and disciplinary procedures and other de jure and de facto obstacles to the effective implementation of the principle of equality of arms, and recommended that the Government adopt all appropriate measures to enable lawyers to form self-governing associations and refrain from excessive control of the profession (see E/CN.4/2001/65/Add.1, paras. 53–59 and 123).

[13] International Bar Association, "Directory of Regulators of the Legal Profession" (2016), p. 12.
[14] For example, Azerbaijan, Denmark, Mongolia, Serbia and Turkey.
[15] For example, Denmark, Lithuania and Portugal.
[16] For example, Czechia and Sweden.
[17] For example, the Law Society of South Africa.

36. The closure of professional associations of lawyers by the authorities is another trend that the Special Rapporteur has noted with deep concern, and it is a fact that professional associations operate in many countries under a continuing threat of immediate closure by the authorities (see A/64/181, para. 25). In Turkey, for example, 34 lawyers' associations have been shut down by decrees and had all their assets confiscated without compensation following the declaration of the state of emergency in June 2016. Chairs, board members and ordinary members of those associations have been prosecuted and sentenced to long-term imprisonment.[18]

E. Composition

37. The Basic Principles provide that the executive body of the professional association shall be elected by its members and shall exercise its functions without external interference (principle 24). The Standards for the Independence of the Legal Profession and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa contain similar language.

38. The Special Rapporteur emphasized that the central role in the establishment, work and appointment of executive bodies of the legal profession needs to remain with the lawyers, and that the membership of the executive body of lawyers associations needs to be pluralistic so that they do not become dependent upon one political party's interests (see A/64/181, paras. 26–27). Bar associations should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession; they should operate as professional associations, working to protect the rights of its members. Situations where the State, in particular the executive branch, controls all or part of a bar association or its governing body, and where membership in such an organization is compulsory, are clearly incompatible with the principle of the independence of the legal profession (see A/71/348, para. 86).

39. Since its establishment, the mandate holder has documented various instances where State authorities exercise control or attempt to take control over the bar by adopting legal amendments or decrees, placing lawyers favourable to the Government in the governing bodies or using direct or indirect threats, pressure or intimidation.

40. In a communication on Tajikistan, for example, the Special Rapporteur expressed concerns on a draft law on the advocacy and the bar association, which placed the body in charge of regulating various aspects of the legal profession under the direct control of the Ministry of Justice.[19] In a report on the United Arab Emirates, the Special Rapporteur expressed concerns at the extensive involvement of the executive and the extremely limited participation of lawyers in the admission and registration of lawyers (see A/HRC/29/26/Add.2, para. 77). Similar concerns were raised in a report on Belarus, in which the mandate holder criticized the excessive control of the executive branch over the organization of the legal profession (see E/CN.4/2001/65/Add.1, paras. 66–76 and 123).

41. In the majority of countries that responded to the questionnaire, the executive body of the bar association is composed exclusively of lawyers appointed by their peers.

[18] Human Rights Institute of the International Bar Association and Law Society of England and Wales, "Challenges to the Independence of the Legal Profession under the State of Emergency in Turkey" (June 2018), pp. 5–6.

[19] See communication AL TJK 1/2015, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=21961.

V. Functions

42. The preamble to the Basic Principles emphasizes that bar associations have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them and cooperating with governmental and other institutions in furthering the ends of justice and public interest.

43. The Standards for the Independence of the Legal Profession and Recommendation No. R(2000)21 contain a detailed list of functions that bar associations may carry out to promote and protect the independence and the integrity of the legal profession and its members. Those functions could be divided into two categories: regulatory and representative.

44. The regulatory functions refer to the elaboration of conditions to gain access to the legal profession; the development and implementation of minimum standards of professional behaviour; the provision of initial and continuing education to members of the legal profession; the handling of disciplinary proceedings against lawyers; and the enforcement of disciplinary decisions. Often, such regulation is based on rules and procedures set out by the bar association itself.

45. The representative functions refer, inter alia, to the bar association's role in promoting and upholding the cause of justice; defending the role of lawyers in society; maintaining the honour and dignity of the legal profession and its members; and promoting the welfare of its members and their families.

46. Not all bar associations exercise all those activities. In general terms, competences of bar associations range from direct regulation of the legal profession to no regulatory power and strictly representative functions. Between those two extremes, a wide variety of models exists. The International Bar Association indicates that the legal profession is exclusively regulated by a bar association in 52 per cent of countries (114 out of 219 countries or territories); by courts in 19 per cent of countries; by the Government in 6 per cent; and by a hybrid or mixed system in the remaining cases.[20]

A. Protection of individual lawyers

47. The Basic Principles clearly state that the obligation to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference lies with the State authorities (principles 16 (a) and 17). They also provide that professional associations of lawyers shall cooperate with Governments to ensure, inter alia, that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics (principle 25).

48. Recommendation No. R(2000)21 provides that bar associations or other professional lawyers' associations should take any action necessary, including defending lawyers' interests with the appropriate body, in case of: (a) arrest or detention of a lawyer; (b) decisions to bring proceedings that call into question the integrity of a lawyer; (c) searches of lawyers themselves or their property; (d) seizure of documents or materials in a lawyers' possession; and (e) publication of press reports that require action on behalf of lawyers. The recommendation also provides

[20] "Directory of Regulators of the Legal Profession", p. 14.

that the role of bar associations in protecting their members and in defending their independence should be respected.

49. When lawyers are arrested or detained, the Standards for the Independence of the Legal Profession provide that bar associations should be informed immediately of the reason and legal basis for the arrest or detention and have access to the lawyer arrested or detained.

50. The Special Rapporteur considers that the protection of individual members of the legal profession lies at the core of bar associations' mandate, particularly in situations where they are not able to defend themselves adequately. In a previous report, the Special Rapporteur stated that bar associations could have no greater objective or interest than the protection of the independence of the profession and its individual members and that they are duty bound to rush in aid of their members when they are subject to harassment and intimidation (see E/CN.4/1998/39/Add.4, para. 36). In a number of country reports, the mandate holder noted with concern that bar associations were unable to provide appropriate support to their members when their security was threatened as a result of discharging their professional activities (see, for example, A/HRC/11/41/Add.3, para. 82).

51. Similar concerns have been addressed in communication procedures. In a communication to the Maldives, the Special Rapporteur expressed concerns about the arbitrary suspension from practice of 54 lawyers who had signed a petition calling for judicial reforms, and reiterated the recommendation made by his predecessor to establish a self-regulating independent bar association.[21] In a joint communication on Turkey, the mandate holder expressed concerns on the arrest, detention and criminal investigation of lawyers following the failed coup attempt of July 2016 and the closure of several lawyers' associations.[22] In a communication to the Russian Federation, the Special Rapporteur expressed concerns at the widespread acts of interference and violence against lawyers allegedly perpetrated by law enforcement forces and security officials and reminded the Government that, when a lawyer is arrested or detained, the respective legal profession should be informed immediately of the reason and be granted access to the lawyer in question.[23]

52. The responses to the questionnaire provide several examples of measures adopted to protect individual lawyers against threats and intimidation in relation to the legitimate exercise of their professional activities. Some bar associations have established special committees for the protection of the rights and legal interests of lawyers,[24] or security protocols to protect individual lawyers against threat or harassment.[25] In response to civil or criminal charges against individual lawyers, some bar associations offer legal representation and assistance to their members before judicial authorities.[26] In a number of countries, the search of lawyers' workplaces, homes or vehicles is allowed only in the presence of a member of the bar association or its authorized person.[27]

[21] See communication UA MDV 5/2017, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23342.

[22] See communication JOL TUR 5/2017, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23138.

[23] See communication AL RUS 9/2010.

[24] The Czech Bar Association and the Mongolian Bar Association.

[25] For example, the Law Society of Northern Ireland.

[26] For example, the Danish Bar Association and Law Society and the Law Association of Zambia.

[27] For example, Lithuania, Serbia and Slovenia.

53. A number of bar associations have established human rights commissions with the aim of supporting lawyers abroad through a rapid response mechanism and fact-finding missions.[28]

B. Admission to the legal profession

54. The admission to the legal profession depends on the fulfilment of certain conditions, namely the achievement of minimum education and training requirements; the admission to the bar and the issuance of a licence to practise law; and membership of a bar association or law society. It should be regulated by law, transparent and objective in order to ensure the quality of the legal services and representation provided by lawyers. Safeguards must therefore be put in place to ensure that entry to the profession is not granted according to criteria other than knowledge, training and technical competence.

55. The Basic Principles require that Governments, professional association of lawyers and educational institutions take all appropriate measures to eliminate any form of discrimination with respect to entry into or continued practice within the legal profession (principle 10). They also call for the adoption of temporary special measures to facilitate access to the legal profession for members of disadvantaged communities or groups particularly vulnerable to discrimination (principle 11).

56. The Special Rapporteur considers that the legal profession is best placed to determine admission requirements and procedures and should thus be responsible for administering examinations and granting professional certificates (see A/64/181, para. 34). Access to legal education and entry to the profession must be open to everyone who meets the required criteria, and no discrimination regarding entry to the profession may take place on any grounds. The lack of clear conditions and criteria of admission to the legal profession and the absence of a compulsory uniform bar examination often result in significant disparities in competence among lawyers (see A/HRC/32/34/Add.1, para. 56; and A/HRC/23/43/Add.2, para. 92).

57. There are different systems for admission to the legal profession around the world. In some countries, candidates must pass a written and/or oral exam to gain admission to the profession. That exam may be organized by the bar association, directly or through an examination commission,[29] by a ministerial body[30] or by a qualification commission established by the Ministry of Justice and the bar association.[31] In the latter case, the legal profession may gain a degree of influence over the admission, depending on the extent to which lawyers form part of the commission and provided that the ministry issuing the licences does not retain the ultimate decision-making power regardless of the conclusions of the qualifications commission (see A/64/181, para. 33). In countries where there is no requirement to pass an examination in order to have access to the legal profession, the Special Rapporteur has recommended that a number of minimum criteria be fulfilled before a candidate be admitted to the bar and issued a licence to practise law, including the successful completion of a public examination (see A/HRC/20/19/Add.3, paras. 67–68; and A/HRC/17/30/Add.3, paras. 66 and 94 (cc)).

58. Admission to practise law or issue a practising certificate are two different but interdependent requirements for lawyers. Usually, a lawyer cannot obtain the right to

[28] For example, the Geneva Bar Association and the Law Society of England and Wales.
[29] For example, Finland, Mongolia, Montenegro, Portugal, Slovenia, Slovakia and South Africa.
[30] For example, Czechia and Denmark.
[31] For example, Lithuania.

practise until admitted, but admission alone does not entitle a lawyer to practise. Commonly, an annual practising licence or certificate will be required.

59. Different systems exist for the issuance of licences to practise law. In some countries, licences are issued by the bar association itself,[32] whereas in others they are issued by a governmental institution, such as the Ministry of Justice or another relevant ministry (see A/HRC/29/26/Add.1, paras. 79–80); and A/HRC/23/43/Add.3, para. 88), or by the Supreme Court of Justice (see A/HRC/35/31/Add.1, para. 63; and A/HRC/23/43/Add.1, paras. 64 and 91–92). In certain countries, lawyers are required to reapply to the Ministry of Justice for reregistration or relicensing after a certain period of time, which may vary between one to several years (see E/CN.4/2001/65/Add.1, para. 76).

60. Over the years, the mandate holder has often expressed concerns about situations where the entry into or continued practice within the legal profession is conditioned or controlled by the executive or the judicial branch, with the legal profession having no role or a very limited role in licensing procedures (see A/71/348, paras. 74–77; and A/64/181, paras. 31–39; see also A/HRC/29/26/Add.2, para. 77; A/HRC/26/32/Add.1, paras. 77–78; A/HRC/23/43/Add.1, paras. 91–92; and A/HRC/20/19/Add.3, para. 66). In those situations, State authorities may use their prerogatives to prevent certain individuals from entering the legal profession or to exclude lawyers who they deem to be "problematic" through the arbitrary withdrawal of lawyers' licences, registration or practising certificates. In the view of the Special Rapporteur, no licences should be withdrawn without the prior consent of the relevant lawyers' association, and any formal decision should be subject to judicial review (see A/64/181, para. 39).

61. In many countries, registration with the competent authority of the State, usually the bar association that has jurisdiction in the area of the lawyer's residence, constitutes a necessary precondition for representing clients before national judicial authorities.[33] The Special Rapporteur considers that mandatory registration with the bar association is fully consistent with international standards relating to access to legal services. However, mandatory registration presupposes the existence of strict and clear admission procedures and should not lead to a situation where qualified legal practitioners are denied equal and effective access to the bar. In a communication to Azerbaijan, the Special Rapporteur noted that the introduction of a mandatory registration with the national bar association as requirement for representing clients in criminal cases allegedly resulted in arbitrary exclusion from the bar of the most "problematic" candidates — for example, lawyers who had previously worked with human rights non-governmental organizations or represented political opponents.[34]

C. Development of professional standards

62. Bar associations have an important role to play in setting up and enforcing professional standards and ethics. Indeed, the legal profession's right to self-govern, as stipulated in the Basic Principles, goes hand in hand with the obligation to also self-regulate effectively.[35] The Basic Principles provide that codes of professional conduct for lawyers should be established by the legal profession or by legislation, in accordance with national law and custom and recognized international standards and

[32] For example, the Law Society of Northern Ireland and the Portuguese Bar Association.

[33] For example, Azerbaijan, Cyprus, Denmark, Germany, Italy, Poland, Serbia and Slovakia.

[34] See communication OL AZE 1/2018, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23569.

[35] *Benchmarking Bar Associations*, p. 100.

norms (principle 26). Similar provisions can be found in Recommendation No. R(2000)21 and in the Standards for the Independence of the Legal Profession.

63. Codes of professional conduct have a dual function. First, their aim is to ensure that lawyers maintain at all time the honour and dignity of their profession and act, in the discharge of their professional functions, in accordance with predefined ethical standards and the duties and responsibilities intrinsic to their functions. Second, they are essential to ensuring the accountability of individual lawyers and the legal profession as a whole and to empowering the public to ensure lawyers maintain the high degree of professionalism expected. In a report on Mexico, the Special Rapporteur expressed the view that the lack of confidence in the legal profession depended, inter alia, on the lack of an independent oversight mechanism in charge of developing and enforcing strict ethical standards for the legal profession (see A/HRC/17/30/Add.3, paras. 65–66).

64. Codes of ethics should be developed by the legal profession itself. When established by law, the legal profession should be duly consulted at all stages of the legislative process (see A/64/181, para. 53). In a number of country reports, the Special Rapporteur expressed concerns over the lack of a uniform code of ethics applicable to all lawyers, countrywide (see, for example, A/HRC/32/34/Add.1, paras. 57–58; A/HRC/29/26/Add.2, para. 78; A/HRC/23/43/Add.2, paras. 90 and 129; E/CN.4/2005/60/Add.2, paras. 48 and 81; and E/CN.4/2003/65/Add.2, paras. 42 and 114).

65. In a number of countries that responded to the questionnaire, codes of ethics have been drafted by the bar association;[36] in some cases, they have been adopted by law.[37] In a few countries, there exist several codes of professional conduct (see E/CN.4/2001/65/Add.3, para. 42), while in others those codes have not yet been adopted (see A/HRC/23/43/Add.3, para. 87).

D. Disciplinary functions

66. The establishment of an independent system for the consideration of disciplinary proceedings for alleged violations of the rules of professional ethics constitutes an important factor in the independence of the legal profession (see A/71/348, paras. 94–95; and A/64/181, paras. 55–58). The Basic Principles provide a number of provisions on the role of bar associations in disciplinary proceedings against lawyers, and similar provisions are included in regional standards. The main objective of those provisions is to ensure a proper balance between independence of the legal profession and accountability for the breach of ethics and professional standards.

67. According to the Basic Principles, disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court (principle 28). The Standards for the Independence of the Legal Profession and Recommendation No. R(2000)21 provide that the appropriate lawyers' association should be responsible for or be entitled to participate in the conduct of disciplinary proceedings against lawyers. According to those principles, the body in charge of considering those complaints should be free from any influence or pressure from the legislative or the executive branches of power or any other party. In the view of the Special Rapporteur, disciplinary bodies should ideally be established by the legal profession itself (see A/64/181, para. 56).

[36] For example, Belgium, Northern Ireland, Montenegro, South Africa and Ukraine.

[37] For example, Denmark and Czechia.

68. Also according to the Basic Principles, complaints against lawyers in their professional capacity should be processed expeditiously and fairly under appropriate procedures, and lawyers should have the right to a fair hearing, including the right to be assisted by a lawyer of their choice (principle 27). Disciplinary proceedings should be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of the principles (principle 29), and the decision of the body in charge of considering disciplinary proceedings should always be subject to an independent judicial review (principle 28).

69. To minimize the risk of arbitrary disbarments or targeted disciplinary action against lawyers, regulatory bodies must ensure that the provisions governing punitive measures against lawyers are clear and transparent. In order to ensure transparency and strengthen public confidence in the legal profession, information regarding the procedures by which complaints against lawyers are handled should be available to the public and easily accessible.

70. The responses to the questionnaire show that the responsibility for disciplinary proceedings against lawyers is usually vested in the bar association[38] or an equivalent independent body.[39] In other countries, disciplinary proceedings are handled by domestic courts.[40]

71. Disciplinary proceedings may represent a powerful weapon in the hands of Governments to interfere with the professional activities of lawyers, in particular those dealing with cases against the State or representing causes or clients that are unpopular with the existing regime.

72. Since its establishment, the mandate holder has documented several cases where disciplinary proceedings against lawyers were handled by the executive branch, either directly by the Ministry of Justice, for instance, in the Maldives, where a government entity deals with all disciplinary matters concerning lawyers (see A/HRC/23/43/Add.3, para. 43), or in Kyrgyzstan, by a qualification commission heavily controlled by the executive branch (see E/CN.4/2006/52/Add.3, paras. 56 and 59). In a recent case concerning Kazakhstan, the Special Rapporteur found that the disciplinary commissions established pursuant to the then-draft law on lawyers' activity and legal aid could not be regarded, in the light of their composition, as an independent body free from any influence or pressure from the legislative or the executive branches of power or any other party.[41]

73. Disbarment, which consists in taking away a lawyer's licence to practise law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards. Country reports show that, in many countries, lawyers are exposed to the threat of disbarment. Such threats aim at preventing the discharge of their professional duties or constitute an act of reprisal for activities carried out in the legitimate exercise of their responsibilities. The Special Rapporteur has stressed on a number of occasions that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer (see A/71/348, para. 96).

[38] For example, Estonia, Italy, Lithuania, Portugal and South Africa.

[39] For example, Azerbaijan, Denmark, Finland, Germany, Mongolia, Sweden and Ukraine.

[40] For example, Belgium and Germany.

[41] See communication OL KAZ 1/2018, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23579.

VI. Partnership between the Government and bar associations in upholding the rule of law, promoting human rights and ensuring access to justice

74. For individuals to fully realize their human rights and fundamental freedoms, they must be protected by national legal systems. While the primary obligation to protect and promote human rights rests on the State, the Basic Principles recognize that the legal profession has a crucial role to play in upholding the rule of law, promoting human rights and ensuring access to justice. The preamble to the Basic Principles provides that professional associations of lawyers should cooperate with governmental and other institutions in furthering the ends of justice and public interest. Bar associations should also work together with State authorities in raising people's awareness about their rights and obligations, and the important role of lawyers in protecting their fundamental freedoms (principle 4).

A. Access to lawyers and legal services

75. The provision of legal advice, assistance and representation for individuals who do not have sufficient economic means is an important area where bar associations and the State can cooperate to promote access to justice and human rights. According to the Basic Principles, professional associations of lawyers shall cooperate with State institutions in the organization and provision of services, facilities and other resources for legal services to poor and disadvantaged persons (principle 3). Furthermore, Principle 25 requires professional associations of lawyers to cooperate with governmental and other institutions to promote and provide effective access to legal services to all persons.

76. The role of bar associations in that area is further clarified in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in December 2012, which recognize that States have the primary obligation to adopt all appropriate measures to give effect to the right to legal aid in their domestic legal order, and identify different legal aid schemes to provide legal assistance to individuals who are otherwise unable to cover the costs of legal proceedings. The Principles and Guidelines call upon States to recognize and encourage the contribution of lawyers' associations in providing legal aid and recommend the establishment of public-private partnerships with bar associations to extend the reach of legal aid (principle 14).

77. The Special Rapporteur considered various options for the provision of legal aid through bar associations in a thematic report to the Human Rights Council (A/HRC/23/43). Access to legal aid has also been considered in a number of country reports (see A/HRC/29/26/Add.4, para. 60; A/HRC/20/19/Add.2, para. 82; and A/HRC/8/4/Add.2, paras. 44 and 76).

78. The responses to the questionnaire show that States have developed a wide array of schemes to facilitate access to legal aid. In some countries, legal aid schemes are set up and managed by the State itself,[42] at times through the court system.[43] In others, legal aid schemes are run by the lawyers themselves or the bar association, either autonomously[44] or in partnership with the State.[45]

[42] Italy, Finland and the United Kingdom of Great Britain and Northern Ireland.
[43] Germany and Switzerland.
[44] Denmark, Mongolia and Montenegro.
[45] Belgium, Czechia, Poland, Serbia, Slovakia and Sweden.

B. Legal education and training

79. Bar associations are also encouraged to cooperate with State authorities in the areas of education and training of lawyers. The Basic Principles provide that Governments, professional associations of lawyers and educational institutions should ensure that lawyers receive appropriate education and training (principle 9), so as to be able to exercise the rights and duties set out in principles 12 to 15, consisting primarily of advising and protecting the rights of their clients and in upholding the cause of justice. Principle 24 includes the provision of continuing education and training among the main purposes of bar associations. Indeed, the development of codes of professional standards would fail to serve its purpose if lawyers were not educated on ethical standards.[46]

80. The Standards for the Independence of the Legal Profession define the functions of lawyers' associations as including the promotion of a high standard of legal education as a prerequisite for entry into the profession, the continuing education of lawyers and the provision of information to the general public on the role of a bar associations (para. 18 (h)). Similarly, Council of Europe Recommendation No. R(2000)21 requires that all measures necessary be taken to ensure high-quality initial training and continuing education of lawyers (principle II.2).

81. The mandate holder devoted an annual report to the issue of initial and continuing legal education and training of judges and lawyers (A/HRC/14/26). In that report, the Special Rapporteur highlighted the importance of legal education as a tool to strengthen the independence of the legal profession, and the role of bar associations in providing legal education and training to lawyers throughput their career (ibid., paras. 31–32, 37–39 and 55). The Special Rapporteur expressed the view that a basic training period prior to the admission to the legal profession and a basic scheme of continuing legal education would certainly enhance the general quality of lawyers' professional services and should be compulsory for all lawyers (ibid., paras. 41 and 57).

82. In a number of countries that responded to the questionnaire, bar associations cooperate with State and educational institutions in providing initial training and continuous education to lawyers.[47]

C. Advocacy and monitoring

83. The Basic Principles acknowledge the important role that lawyers, alone and through the bar association, may play in the public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights (principle 23).

84. Bar associations must ensure that the legislation enacted by the State is in conformity with international human rights law and responds to the country's current needs and realities. They should advocate for a strong and independent judiciary and legal profession and denounce any abuse of power by State authorities that prevents or limits access to justice. The Special Rapporteur believes that, at a very minimum, bar associations should be consulted and allowed to participate in public debates concerning the adoption of legislation relating to access to justice or the organization of the legal profession (see, for example, A/HRC/32/34/Add.1, para. 121).

85. The role of bar associations is particularly fundamental in countries with weak or developing legal systems; in such circumstances, bar associations can play an

[46] *Benchmarking Bar Associations*, p. 111.

[47] Belgium, Estonia, Finland, Germany and South Africa.

essential role in transforming society.[48] They can advocate for law reform to promote human rights and the rule of law and play an important role in constitutional review or constitution-making processes. Through law reform activities, bar associations can further advocate for laws giving effect to international human rights standards.

86. The responses to the questionnaire provide several examples of the way in which bar associations participate in the development of legislation and policies on issues relating to their mandate. Some bar associations have established a human rights committee to monitor State compliance with its human rights obligations[49] and participate in public discussion concerning law reform, the administration of justice and the protection and promotion of human rights.[50]

VII. Conclusions

87. Bar associations play a vital role in the organization and safeguarding of the independence and integrity of the legal profession and its members. The underlying rationale for their creation is the need to provide a platform to allow the legal profession to carry its legitimate activities without any external interference.

88. Bar associations should meet, at a minimum, the following requirements: (a) independence; (b) a self-governing nature; (c) a general mandate to protect the independence of the legal profession and the interests of its members; and (d) recognition under law.

89. A bar association is generally deemed to be independent when it is mostly free from external influence. The best guarantee of such independence is a self-governing body, understood as an organization independent from the State or other national institutions that is able to set its own rules and regulation, make its own decisions free from external influence, represent its members' interests and be able to sustain itself.

90. In assessing independence, one should thus examine both the legal and regulatory provisions in place, and the actual impact they have on the ability of lawyers to carry out their duties in an independent and impartial manner. Some States have chosen a self-regulatory model, while others have a mixed model allowing for some State intervention. Not all forms of State intervention have, by themselves, an adverse impact on the ability of the legal profession to carry out their professional duties in accordance with the rule of law.

91. The present report shows that bar associations may carry out different functions to promote and protect the independence and the integrity of the legal profession and its members. They can have representative and regulatory functions or only representative functions. Regulatory functions pertain to: (a) the elaboration and implementation of requirements and procedures to gain access to the legal profession; (b) the promotion of initial and continuous legal education for lawyers; (c) the elaboration of code of professional conducts; and (d) the handling of disciplinary proceedings against lawyers. In the majority of countries that responded to the questionnaire, the legal profession is exclusively regulated by the bar associations.

[48] *Benchmarking Bar Associations*, p. 128.

[49] The Law Society of British Columbia, for example, has established an advisory committee that monitors rule-of-law violations and attacks on the independence of judges and lawyers both in Canada and abroad.

[50] Azerbaijan, Estonia, Germany, Lithuania, Poland, Portugal and Sweden.

92. The legal profession has a crucial role to play in upholding the rule of law, promoting human rights and ensuring access to justice. Professional associations of lawyers should cooperate with State institutions in the organization and provision of legal aid services to poor and disadvantaged persons. The report shows that, in many countries, legal aid schemes are provided by bar associations, either autonomously or as a public-private partnership with the State. The report also highlights the important role of bar associations in providing legal education and training to lawyers throughout their career, and gives examples of how such associations contribute to public discussions on issues such as legal reform, the administration of justice and the promotion and protection of human rights and the rule of law.

93. Throughout the report, the Special Rapporteur has documented various forms of interference with the independence of bar associations. In many countries, legal or administrative obstacles prevent lawyers from establishing or joining independent professional organizations, and lawyers find themselves isolated and unable to act collectively to defend the independence of the legal profession and its members. In countries where bar associations have been established, the report identifies the various forms of external interference in their legitimate activities, ranging from different forms of control by the executive and judicial branches on the entry into or continued practice within the legal profession, to threats of disciplinary action and intimidation against the members of bar associations, that may even lead, in extreme circumstances, to their arbitrary arrest and detention.

VIII. Recommendations

94. In the light of existing international and regional standards, and based on the contributions received, the Special Rapporteur would like to offer the following recommendations relating to the establishment, composition and functions of bar associations. The recommendations do not purport to identify an "ideal model" of bar association, but rather seek to identify common principles for ensuring the independence and the effectiveness of those associations in the discharge of their functions as guarantor of the independence of the legal profession.

A. Establishment

95. The Special Rapporteur recommends that, in countries where there is no organized legal profession, an independent and self-governing bar association be established as a matter of priority to safeguard the independence and integrity of the legal profession and enable lawyers to exercise their legitimate activities without any external interference.

96. In order to guarantee their independence from the executive and judicial branches and ensure the effective self-governance of the legal profession, bar associations should be recognized by law. The law should include, at a minimum, provisions relating to the independence of such associations, their composition and the definition of their functions, and be elaborated with the meaningful participation of the legal profession.

97. Bar associations should be established and organized taking into account the unique needs of the legal profession. In order to ensure the integrity of the entire profession and the quality of legal services, it is preferable to establish a single professional association regulating the legal profession.

98. **Bar associations should be provided with adequate human and financial resources to perform their functions independently and autonomously. Membership fees are an important means to ensure the effectiveness and the independence of a bar association. In cases where it is necessary to obtain funds from external sources, bar associations should always ensure that external funding does not compromise their independence.**

99. **National authorities should support the establishment and work of bar associations without interfering with those processes.**

B. Composition

100. **In order to guarantee the independence of the legal profession, the majority of members of the executive body of the bar association should be lawyers elected by their peers.**

101. **Members of the executive body should exercise their functions without external interference. Situations where the State, in particular the executive branch, controls all or part of a bar association or its governing body are incompatible with the principle of the independence of the legal profession.**

102. **The selection process for members of the executive body of a bar association must be transparent and participatory so as to avoid corporatism or politicization of the process. The membership of the executive body needs to be pluralistic in order to avoid its dependence upon any one political party's interests.**

C. Duties and responsibilities

103. **The duties and responsibilities of the bar association should be clearly defined in the law recognizing it and in its internal by-laws. In order to safeguard the independence of the legal profession, the bar association should be responsible for regulating the access the legal profession, developing and implementing minimum standards of professional behaviour, providing initial and continuing education to the members of the legal profession and handling disciplinary proceedings against lawyers. The bar association should also have general functions with regard to the promotion of the role of lawyers in society and the maintenance of the honour and dignity of the legal profession and its members.**

104. **The involvement of State authorities in the regulation of the legal profession does not per se jeopardize the independence of the profession itself. When certain regulatory functions are assigned to the judiciary or the executive branch, it is important to adopt all appropriate measures to ensure that the delegation of those regulatory competences to external actors does not undermine the principle of independence and integrity of the legal profession.**

D. Protection of lawyers

105. **The protection of the individual members of bar associations, particularly in situations where they may not be able to adequately defend themselves, should be at the core of the mandate of any bar associations.**

106. **It is the duty of all State authorities to respect the role of bar associations in protecting their members, so as to ensure that they are able to carry out their professional activities without any intimidation, hindrance, harassment or improper interference.**

107. When lawyers are arrested or detained, the bar association should be informed immediately of the reason and legal basis for the arrest or detention and have access to the lawyer arrested or detained.

E. Admission to the bar

108. The Special Rapporteur considers that the legal profession is best placed to determine admission requirements and procedures and should thus be responsible for administering examinations and granting professional certificates.

109. The procedure for the admission to the legal profession should be based on objective criteria previously established by law or by the bar association itself. Entry to the profession should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their independence and integrity. Competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process.

110. The involvement of State authorities in the assessment of candidates risks undermining the independence of the legal profession. In cases where candidates are formally admitted to the legal practice by a ministerial body or a qualification commission, appropriate measures should be adopted to ensure that the admission to the bar is decided on the basis of the recommendation of the bar association, that the relevant authorities follow in practice.

111. The authority to issue a licence to practise law should rest with the bar association. In cases where licences are issued by another State institution, such as the Ministry of Justice or the Supreme Court, appropriate measures should be adopted to ensure that the issuance of the licence is decided on the basis of the recommendation of the bar association, that the relevant authorities follow in practice. The same principles apply to the renewal of licences.

112. No withdrawal of licences should take place without the prior consent of the relevant lawyers' association, and any formal decision should be subject to judicial review.

F. Development of professional standards

113. Bar associations should have general responsibilities with regard to the development of professional standards and codes of conduct. When codes of professional conduct are adopted by law, the legal profession should be duly consulted at all stages of the legislative process.

114. The Special Rapporteur is of the view that the adoption of a unified code of ethics applicable to all lawyers country-wide constitutes a good practice.

G. Disciplinary proceedings

115. The Special Rapporteur is seriously concerned about the widespread use of disbarment as a measure to intimidate lawyers and prevent them from discharging their professional duties. Disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.

116. In order to ensure a proper balance between independence of the legal profession and accountability for any breach of ethics and professional standards, the responsibility for disciplinary proceedings against lawyers should be vested in an impartial disciplinary committee established by the legal profession, an independent statutory authority or a court.

117. The disciplinary body should be free from any influence or pressure from the legislative or the executive branches of power or any other party. The involvement of the executive branch of power in the conduct of disciplinary proceedings against lawyers undermines the independence of the legal profession.

118. Disciplinary proceedings should be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession. In order to ensure transparency and strengthen public confidence in the legal profession, information on the procedures for handling complaints against lawyers should be available to the public and made easily accessible.

119. Lawyers submitted to disciplinary proceedings should have all procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choice.

120. Decisions of the disciplinary body should be reasoned and subject to an independent judicial review.

H. Legal aid

121. Bar associations should cooperate with State institutions in providing access to legal advice, assistance and representation for individuals who are otherwise unable to cover the costs of legal proceedings.

122. In order to ensure a broader reach of the legal aid services provided or of pro bono legal aid, States should encourage bar associations to develop legal aid programmes or to support existing legal aid schemes. Where appropriate, States should establish partnerships with bar associations to ensure the provision of legal aid.

I. Legal education and training

123. The Special Rapporteur underscores the importance of legal education as a tool to strengthen the independence of the legal profession.

124. Bar associations should cooperate with States and educational institutions in promoting a high standard of legal education as a prerequisite for entry into the profession and the continuing training to lawyers throughout their career.

J. Advocacy and monitoring

125. Bar associations have an important advocacy role in upholding the rule of law and promoting the equal and effective enjoyment of human rights.

126. States should adopt all appropriate measures to enable the participation of bar associations in the public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.

Annex

List of respondents

States

Angola

Azerbaijan

Bahrain

Cuba

Cyprus

Czechia

Denmark

Germany

Greece

Iraq

Italy

Lithuania

Madagascar

Malta

Mexico

Mongolia

Montenegro

Namibia

Poland

Portugal

Qatar

Serbia

Slovakia

Sudan

Sweden

Switzerland

Turkey

Ukraine

Bar associations

Council of Bars and Law Societies in Europe

Cyprus Bar Association

Estonian Bar Association

Finnish Bar Association

German Federal Bar

Kuwait Bar Association

Law Society of England and Wales

Mexican Bar Association

Mongolian Bar Association

Slovenian Bar Association

Swedish Bar Association

Civil society

International Bar Association Human Rights Institute